IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8453 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARAYAN JAGJIVAN PETADIA

Versus

VINODBHAI JAGJIVAN PATADIA

Appearance:

1. Special Civil Application No. 8453 of 2002

MR TUSHAR MEHTA for Petitioner No. 1

MR TS NANAVATI for Respondent No. 1

MR DHARMESH V SHAH for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/11/2002

ORAL JUDGEMENT

Rule. Mr TS Nanavati waives service of rule on behalf of respondent No.1 and Mr Dharmesh V Shah waives

service of rule on behalf of respondent No.2.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 24-7-2002 passed by the Gujarat State Cooperative Tribunal rejecting the petitioner's application Ex.48 for joining Satyagrah Chhavani Cooperative Housing Society Ltd. as a party respondent in Appeal No.387 of 1994.

3. Mr Tushar Mehta for the petitioner - original defendant No.2 submits that the said Society was already defendant No.1 in the Lavad Case No.4 of 1982 and, therefore, it is a necessary party in the appeal also. However, through inadvertence the Society was not joined as a party respondent in appeal and, therefore, application Ex.48 given by the petitioner-appellant ought to have been granted by the Tribunal.

4. Mr TS Nanavati learned counsel for respondent No.1 -original plaintiff submits that the petitioner has been adopting dilatory tactics and that is why the appeal was also dismissed for default by the Tribunal on the earlier occasion and it was pursuant to the order passed by this Court on 1-8-2001 in Special Civil Application No.1340 of 1999 that the appeal came to be restored subject to the petitioner paying respondent No.1 herein original plaintiff, an amount of Rs.15,000/- as costs which amount was also not deposited within the time limit specified by this Court and, therefore, was enhanced to Rs.20,000/- in MCA No.1798 of 2001.

5. Having heard the learned counsel for the parties, it appears to the Court that since respondent No.2-Society herein was already defendant No.1 in Lavad Case No. 4 of 1982, it is required to be joined as party respondent in Appeal No.387 of 1994. However, there is some substance in the grievance being made on behalf of the original plaintiff that even if the delay on the part of the petitioner is not malafide, the lapses on the part of the petitioner-appellant have contributed to delay in disposal of the appeal in spite of direction given by the Court to the Tribunal to decide the appeal preferably by 31st December, 2001.

6. In view of the above, this petition is allowed and the impugned order dated 24-7-2002 is quashed and set aside and application Ex.48 is granted with a direction to the Tribunal to permit the petitioner to add Satyagrah Chhavani Cooperative Housing Society Ltd. as respondent No.2 subject to the condition that -

(i) the petitioner pays each of the two respondents herein i.e. original plaintiff as well as the Society a sum of Rs.7500/- by 15th December, 2002. The amount shall be paid to the respondent-parties by an account payee cheque in favour of the respective parties.

(ii) If the amounts as aforesaid are not paid over to the respondents herein, this petition shall stand dismissed.

(iii) If the amounts as aforesaid are paid within the aforesaid time limit, thereafter the Tribunal shall hear and decide appeal no.387 of 1994 as expeditiously as possible and preferably by 28th February, 2003.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)
zgs/-